

FRIDAY UPDATE—FEBRUARY 11, 2005

*The weekly update of the activities of the Indiana General Assembly
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Another week at the General Assembly has ended. Below are reports on bills discussed this week.

If you are interested in reading the text of any bill introduced this session, you may find bill information on Access Indiana at http://www.in.gov/serv/lssa_billinfo.

You may access past issues of the Friday Update at <http://www.in.gov/judiciary/center/leg/index.html>.

CIVIL LAW:

The Senate Judiciary Committee heard SB 373 creating a statute of limitations for a possessor of real property based on deficient design, production or installation of improvements to the property. In 1967, Indiana passed its present premises liability law, which grants a ten and twelve-year statute of limitations to a person who designs, plans, supervises, or constructs an improvement to real property. This legislation extends this same statute of limitations to a possessor of real property at the time the alleged deficiency in the improvement to the property accrued, explained Sen. Bray, author. The bill passed with a technical amendment 9-0.

The House Judiciary Committee heard HB 1063 concerning eminent domain for commercial uses, which was amended to narrow the bill to permit the taking of property for commercial use if the property owner rejects a 150% value offer and to exempt railroads from the bill. The bill passed as amended 7-5. land.

CRIMINAL LAW:

The Senate Corrections, Criminal and Civil Matters heard SB 175, Sen. Dillon's bill to authorize Global Positioning System ("GPS") electronic monitoring for home detention. Todd McCormack, Chief Probation Officer in Hendricks County and member of the Sentencing Policy Study Committee, explained that the bill was intended to expressly authorize GPS monitoring. Sen. Long explained that this bill was one of several, including SB 153, intended to authorize GPS monitoring. Steve Johnson of the Prosecuting Attorneys Council also spoke in favor of the bill, which was amended by Sen. Dillon to add a definition of "constant supervision" and to otherwise make the bill match SB 153. The amendment was approved by consent and the bill passed unanimously.

The Corrections, Criminal and Civil Matters Committee heard SB 233, which would extend the crime of child solicitation to include soliciting children age 14 to 16. Sen. Drozda, the author, and several law enforcement officers explained that at present

the many adults who use the Internet to solicit sex from young people aged 14 to 16, are not subject to the child solicitation crime. Sens. Broden and Bray were concerned that the bill would criminalize amorous communications between young persons. To address those concerns, the bill was amended, by consent, to strike its change of subsection (b) of the existing offense and instead to add a new subsection (c) which would make the offense apply to knowing or intentional solicitations of persons aged 14 and 15 by persons who are 21 years of age or older. The amended bill passed unanimously.

The Senate Corrections, Criminal and Civil Matters Committee heard SB 400, which would create a new A misdemeanor/D felony for battery on a sports official. Sen. Clark, author, and members of a number of athletic organizations spoke in favor of the bill, which passed by unanimous vote.

The House Courts and Criminal Code Committee met to discuss HB 1099, voyeurism. Marion County Prosecutor, Carl Brizzi, presented this bill and explained that an incident involving a woman in Broad Ripple helped prompt the legislation. The bill would make the second or subsequent offense of voyeurism a Class D felony instead of a Class B misdemeanor. The committee noted that this enhancement for a repeat offense was similar to the action they took last year on public indecency. The bill passed unanimously.

The House Courts and Criminal Code committee heard HB 1175, inmate medical care expenses. The bill would allow a court to order as a term of the sentence an inmate to reimburse a county for any medical care expenses incurred by the county in providing medical care to the inmate. The bill passed 8-0.

HB 1223, methamphetamine, was considered extensively by the House Courts and Criminal Code committee. Rep. Koch presented an amended version of the bill that contained a lot of the language of HB 1685. The language in the bill will further restrict the sale of cold tablet medicines containing ephedrine and pseudoephedrine by requiring them to be signed for at the pharmacy. In addition, the bill requires notification to family and children agencies when children are found at meth lab sites. The amended bill passed 10-0.

The House Ways and Means Committee amended HB 1241 concerning DNA samples from felons to remove the \$1 fee from civil cases and voted do pass as amended 20-0. The House Public Safety and Homeland Security Committee heard HB 1776 concerning seizing weapons from a mentally ill individual, which was amended to provide for the seizure of a firearm from a person who is dangerous as defined in a new chapter of the code (IC 35-47-13), the application of a warrant to seize the weapon, a hearing regarding a seized weapon, and method for extending the retention period of the seized weapon. The committee also discussed a possible second reading amendment to include immunity provisions for law enforcement officers and to require an application for the return of a seized weapon. The bill passed as amended 10-0.

FAMILY LAW:

The Governor's legislation establishing the Department of Child Services, SB 529 was heard by the Committee on Health and Provider Services in the Senate Chambers. Sen. Lawson, author, explained this legislation places child protection, child support, adoption, foster care and independent living services in this new office. It repeals legislation requiring the establishment of local child protection services and repeals legislation designating the child support bureau as Indiana's Title IV-D agency. Sen. Lawson introduced an amendment, concerning the transfer of certain CHINS and delinquent matters and compliance with an exemption granted permitting Clerks to collect child support, which was adopted by consent.

Mitch Roob, Secretary of FSSA testified in support of this bill. He said FSSA would continue to work with Child Services. Judge James Payne, retaining his designation as judge by committee members who could not consider calling him anything else, testified in favor of the bill in his new role as the head of the new child services office created by Executive Order of the Governor. He said this bill presents an opportunity for Indiana to become a leader in protecting children. He explained the child support portion of the bill was needed for compliance with a waiver granted to Indiana by the federal government permitting Indiana's Clerks to collect support with ISETS. If Indiana does not comply with the waiver previously granted, the state will lose both TANF monies and IV-D reimbursement. In addition, Indiana must use a central dispersing unit and have all income withholding orders go to this unit. Electronic transfers of funds must also occur.

When asked how reorganization would be seen in local communities, Judge Payne said the primary issue is the number of caseworkers. He said a risk tool, access to additional resources, and the use of consistent procedures on a statewide basis are all needed. A veritable "Who's Who" of child services testified in favor of the legislation, which passed the committee as amended and was recommitted to the Tax and Fiscal Policy Committee in the Senate 9-0.

JUDICIAL ADMINISTRATION:

The Senate Appropriations Committee heard SB 17, sponsored by Sen. Lawson, concerning Hendricks superior courts. This bill would allow for the establishment of two additional superior courts on January 1, 2007, and the appointment of one full-time magistrate to serve until that time. Hendricks Superior Court Judges Freese and Love testified in support of the bill, as well as the chief probation officer, Todd McCormack, all emphasizing the impact of the extreme population growth and its impact on the judicial system. The Committee also heard SB 161, sponsored by Sen. Lanane, which would allow for the appointment of one full-time Madison superior court magistrate. Tim State, Madison County Court Administrator, testified in support of this bill explaining that after the establishment of the current three superior courts 28 years ago, Madison county has been self-funding additional court commissioners to assist the courts. The Committee agreed that both counties needed the additional court resources, but

decided to hold off on voting for either bill explaining that it would likely incorporate the bills into a consolidated budget bill submitted later in the session.

The Senate Judiciary Committee heard SB 303 concerning the Marion Superior Court. Sen. Clark, author, explained the bill amended the statute which permits a party in Marion Superior Court who has a magistrate assigned to hear a case to request the elected judge to hear it. In addition, the legislation removes the language requiring the Marion Superior Court Administrator be paid 80% of the salary of a judge. Judge Bradford, Chief Judge of Marion Superior Court, explained if one wants to have the elected judge hear the case, one should be able to get one. Attorneys use this as a tactic to get a continuance. An amendment offered by Sen. Clark would permit this to occur by statute with a procedure similar to one used to request a change of judge under the trial rules. Judge Bradford also said the Court Administrator's salary is paid by the county and needs to be at a level to attract the best persons. Sen. Long stated the state should not micromanage the court administrator's salary. The amendment was adopted by consent and passed committee 10-0.

Last week we reported on SB 322, local spending on criminal defense, and this week the subcommittee reported on its amendment. The bill as amended would only cover actions brought by a prosecutor, attorney general of the United States, the State Attorney General, or a federal district attorney. Unless the public officer or employee is exonerated on all counts/charges, the local unit may not pay for any part of the defense of the officer or employee. However, if the officer or employee is exonerated completely, the local unit shall reimburse him/her at a reasonable rate. The bill passed 10-0 as amended.

Similarly, last week we reported on SB 18 and SB 646, loss or removal from office by a convicted felon. The subcommittee that worked on these bills combined them into SB 18, and determined that the announcement of the verdict is the event that would trigger the loss of office. The language of the bill was also clarified to provide that the felony must be one that arose out of the course of official duties/office. This bill passed as amended 10-0.

The Senate Judiciary Committee considered SB 516, Victim notification. Sen. Lubbers, the author, asked that the bill be amended to place the notification responsibility with the DOC instead of the Attorney General's office. Newly appointed DOC Commissioner Donahue testified in favor of this bill that would establish an automated victim notification system. Victim advocates also spoke in favor of the bill, which passed 10-0.

The House Judiciary Committee considered HB 1703, Marion superior courts. Rep. Murphy, the author, at the outset of the meeting offered an amendment that he said was the result of discussions with the Indianapolis and Marion County Bar Associations, as well as some of the judges. The intent of this bill is to establish a merit selection process for judges in Marion County. This bill would allow the current judges in Marion County to stand for retention in either 2006 or 2008. It would also establish an eleven

member judicial nominating commission, chaired by the Chief Justice, and consisting of appointments by the two Bar Associations, the Governor and each political party's County Chair. Many judges in Marion County testified on either side of this bill. The Chief Justice testified in favor of a non-partisan merit selection process. Many others testified, and after extensive committee discussion, the bill passed along party lines, as amended, by a vote of 7-5. For a more detailed description of the committee meeting, see the Indianapolis Star article at <http://www.indystar.com/articles/9/220676-3559-009.html>.

The House Courts and Criminal Code Committee heard testimony regarding HB 1829, concerning Monroe circuit court. Reps. Koch and Pierce presented the bill that would add an eighth judge to the court on January 1, 2006 and a ninth judge on January 1, 2008. Judges Bridges and Hoff as well as a county commissioner testified in favor of the bill, which passed 10-0.

MISCELLANEOUS:

The House Judiciary Committee heard HB 1398 concerning technical corrections, presented by Rep. Foley. The bill was amended to remove IC 6-1.1-4-35 regarding publication requirements which was deemed to be substantive and added three additional provisions for technical corrections. The bill passed as amended 11-0.

SALARIES & BENEFITS:

The Senate Pensions and Labor Committee discussed SB 88, Judges' retirement benefits. This bill would allow a retired judge to receive his/her retirement benefit and still receive a salary for subsequent employment with state government. One of the examples given in testimony both by Sen. Bray, author, and Judge John Kellam, was the desire of a retired judge drawing a pension to teach at a state university, which would be impermissible without the passage of this bill. This bill was amended so that a judge could not retire and then run for judicial office again or become a magistrate and still draw his/her pension. Judge Bridges was also there in support of this bill, which passed unanimously.

The Senate Pensions and Labor Committee considered SB 423, forfeiture of public pensions for misconduct. Sen. Clark proposed an amendment that would remove the judicial and legislative departments of state government from the scope of this bill, expressing concerns about separation of powers issues. The amended bill passed 7-4.

The House Ways and Means Committee heard HB 1777 concerning judicial compensation. Judge Kellams, President IJA, and Chief Justice Shepard testified in support of the bill. The Committee raised questions concerning whether the increase in fees would affect access to the courts and why judges in city courts and Marion County Small Claims Courts would not benefit from collecting the increase in fees. Judge Kellams explained that even with this fee increase Indiana still had lower court costs than other states and the Chief Justice emphasized the need to keep court costs the same within all courts of the state. Also, Steve Johnson and Jim Fleming of the Prosecuting

Attorneys Council testified in favor of the bill on behalf of prosecutors. The Committee passed the bill 18-3. A copy of the roll call vote is available on Access Indiana.